

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

M. ASH-SHARIEF AL'ASKARI,	:	CIVIL NO. 1:00-CV-1449
	:	
Plaintiff	:	(Judge Caldwell)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
ROBERT S. GOLDRING,	:	
	:	
Defendant	:	

ORDER

The plaintiff commenced this *Bivens*¹ action by filing a complaint on August 14, 2000. By an Order dated April 10, 2001, the defendants' motion to dismiss was granted and the complaint was dismissed on the basis that the plaintiff failed to exhaust available administrative remedies prior to commencing this action.

The plaintiff appealed the dismissal of his complaint to the United States Court of Appeals for the Third Circuit. The Third Circuit concluded that there were factual disputes concerning whether the plaintiff exhausted administrative remedies. The Third Circuit reversed the dismissal of the

¹See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

plaintiff's access to the courts claim against defendant Goldring. The Third Circuit affirmed on other grounds the dismissal of the claims against the other defendants.

On September 15, 2003, the plaintiff filed a motion for leave of court to take the deposition of an incarcerated person. The plaintiff has not filed a brief in support of this motion.² Pursuant to Local Rule 7.5, Rules of Court, M.D. Pa, the motion is deemed withdrawn.

On September 29, 2003, the plaintiff filed a second motion for leave of court to take the deposition of an incarcerated person. The plaintiff did file a brief in support of this motion.³ The defendant has not filed a brief in opposition to this motion. Pursuant to Local Rule 7.6, the defendant is deemed not to oppose the motion. Since the motion

² We note that although the plaintiff did not file a brief in support of his motion, the defendant filed a brief in opposition to the motion. In his brief, the defendant argues *inter alia* that the motion should be deemed withdrawn because the plaintiff failed to file a brief in support.

³ The plaintiff's brief in support is actually a section of his motion labeled as a brief in support. The plaintiff is instructed that, in the future, he should not make his brief in support a part of his motion. Rather, a brief in support should be a separate document.

is unopposed, it will be granted. The plaintiff is reminded that he must arrange to have the deposition testimony recorded in a manner allowed by Fed.R.Civ.P. 30 and that he must have an officer present who is willing and capable of giving the oath and presiding over the deposition. The plaintiff and defense counsel shall confer on mutually agreeable dates for the deposition, and then defense counsel shall contact the Warden of the institution where the inmate is incarcerated to schedule the deposition at the institution.

On September 26, 2003, the plaintiff filed a motion to remove defendant's counsel for unethical conduct and a brief in support of that motion. On October 7, 2003, the defendant filed a brief in opposition to that motion. The plaintiff has not shown that defense counsel engaged in unethical conduct. The plaintiff's motion to remove defense counsel is without merit and will be denied.

On November 5, 2003, the defendant filed a motion for a protective order and a brief in support of that motion. The motion concerns the deposition of the defendant noticed by the

plaintiff to occur on November 10, 2003 in Philadelphia.⁴ The defendant contends that he lives in Virginia and works in Washington D.C. and that, therefore, his deposition should take place either in Washington D.C. or in the Eastern District of Virginia. In the alternative, the defendant contends that the deposition should take place in the Middle District of Pennsylvania. The defendant also contends that the plaintiff has indicated that he will not accept telephone calls or mail from defense counsel and that he refuses to serve notices of depositions on defense counsel. Defense counsel states that he is not available for the defendant's deposition on November 10th at the time noticed by the plaintiff.

Since the defendant's deposition is scheduled for November 10, 2003, there is not sufficient time to await a brief in opposition by the plaintiff. It has become clear to the undersigned that the plaintiff and defense counsel are not

⁴ The Notice of Deposition served by the plaintiff actually is addressed to Robin Greggs and Viola Hursh as well as the defendant in this case. The motion for a protective order addresses only the deposition of the defendant. We note that the defendant notes in a footnote in his brief that the Notice of Deposition as to Greggs and Hursh violates the 100 mile rule of Fed.R.Civ.P. 45(b)(2) and that the plaintiff has not served Greggs and Hursh with subpoenas nor provided them with checks to pay their witness and mileage fees.

cooperating in the discovery process. We will grant the defendant's motion for a protective order. We will quash the Notice of Deposition as to the defendant and we will schedule the defendant's deposition for November 13, 2003 at 9:00 a.m. in Courtroom No. 5, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania. The undersigned will preside over the deposition and will, if necessary, administer the oath to the deponent. The deposition will be limited to two hours unless good cause is shown for additional time. The plaintiff must arrange either to have a court reporter present or to record the testimony in some other manner allowed by Fed.R.Civ.P. 30.

AND NOW, this 6th day of November, 2003, **IT IS HEREBY ORDERED** that the plaintiff's first motion (doc. 75) for leave of Court to take the deposition of an incarcerated person is **DEEMED WITHDRAWN**, the plaintiff's second unopposed motion (doc. 84) for leave to take the deposition of an incarcerated person is **GRANTED**, and the plaintiff's motion (doc. 82) to remove defendant's counsel is **DENIED**. **IT IS FURTHER ORDERED** that the defendant's motion (doc. 92) for a protective order is **GRANTED**

and the Notice of Deposition is **QUASHED** as applicable to the defendant. **IT IS FURTHER ORDERED** that the deposition of the defendant shall take place before the undersigned on November 13, 2003, at 9:00 a.m. in Courtroom No. 5. Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania. **FINALLY, IT IS ORDERED** that the discovery deadline is extended to December 15, 2003, the deadline for filing discovery-related motions is extended to December 22, 2003, and the dispositive motions deadline is extended to January 15, 2004.

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: November 6, 2003.